IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 5.12.2007

Sudesh Kumar ...Appellant

VERSUS

Nasib Kaur & others …Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.A.S.Nabhewala, Advocate for the appellant

Mr.Vikas Bahl, Advocate
for respondents no.1, 2, 13 and 14

Permod Kohli, J. (Oral)

The dispute in the present case relate to the succession to the share of Mohani who admittedly died issueless. Plaintiffs, namely, Nasib Kaur and Parkash Kumar and defendants no.4 and 5 are admittedly sisters of Mohani, whereas defendant no.3 is the brother of the deceased Mohani. They are the only Class I heirs of the deceased. Plaintiffs filed suit for declaration claiming 2/5th share in the estate of Mohani, deceased. Appellant herein who was defendant in the suit, pleaded that he has acquired half

share in the estate of Mohani by virtue of decree dated 5.2.1993 passed in Civil Suit No.9 of 1992 by Shri B.S.Sandhu, then Sub Judge Second Class, Nawanshahar. This decree was passed on the basis of some family settlement said to have arrived at between defendant no.3, now the appellant Sudesh Kumar and the plaintiffs in the suit. The trial court i.e. Civil Judge (Junior Division), Nawanshahar, vide the impugned judgment dated 2.1.1997 decreed the suit of the plaintiffs and directed that they be given 2/5th share (1/5th share each) in the suit land, including land measuring 13 kanals 15 marlas comprising of Khewat/khatoni No. 41/67.

Aggrieved of the judgment and decree of the trial court , present appellant (defendant no.3) preferred an appeal in the Court of Additional District Judge, Nawanshahar. This appeal came to be dismissed vide the judgment and decree dated 3.5.2002 and the judgment of the trial court was upheld. Present Regular Second Appeal has been filed against the aforesaid impugned judgments.

During the course of hearing, learned counsel appearing for the appellant has submitted that he is aggrieved of the allocation of share, particularly, in the land comprising Khasra/Khatoni No.41/67. According to the learned counsel, after the decree passed in Civil Suit No.9 of 1992, half of the share of deceased Mohani was acquired by the appellant and the dispute remains only in respect to the half of the share of Mohani. He has particularly referred to the land comprising in Khewat no.41/67.

According to the learned counsel, Mohani was the owner of 13 kanals 15 marlas of land comprising in Khewat No.41/67 and after the decree in Civil Suit No.9 of 1992, share of Mohani deceased was left only 6 kanals 7 ½ marlas. However, while passing the decree, the trial court gave share to the plaintiffs/respondents herein out of 13 kanals and 15 marlas. He has referred to the findings recorded by the trial court in this regard. It is further stated that Khewat no.46/67 was the old number recorded in the Jamabandi for the year 1980-81 and in subsequent Jamabandi, these khewat numbers were changed by the Revenue Authorities, though, the Killa numbers and the measurement remained the same. According to the learned counsel, subsequently, Khewat No.46 was re-numbered as khewat no.41, as per Jamabandi for the year 1985-86. When this position emerged from the record, learned counsel appearing for the parties have agreed for a consent order and modification of the impugned decrees.

Accordingly, on the basis of the consent and agreement of learned counsel appearing for the parties, I modify the impugned judgments and decrees as follows:-

(i) Plaintiffs/respondents shall have 2/5 share out of 6 kanals and 7 ½ marlas of land comprising in khewat no.46/67 re-numbered as 41/67; and

(ii) rest of the decrees shall remain intact.

The impugned judgments and decrees shall stand modified to that extent and the plaintiffs/respondents shall be entitled to

their share as held by the courts below in the manner indicated here-in-above. Parties shall bear their own costs. Records of the courts below be sent back.

(PERMOD KOHLI)
JUDGE

5.12.2007
MFK